

Title 24-A: MAINE INSURANCE CODE

**Chapter 77: BUSINESS TRANSACTED WITH BROKER-CONTROLLED
PROPERTY OR CASUALTY INSURER HEADING: PL 1991, c. 828, §33 (new)**

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MRS Title 24-A, Chapter 77: BUSINESS TRANSACTED WITH
BROKER-CONTROLLED PROPERTY OR CASUALTY INSURER

Text current through August 1, 2014, see disclaimer at end of document.

Maine Revised Statutes

Title 24-A: MAINE INSURANCE CODE

Chapter 77: BUSINESS TRANSACTED WITH BROKER-CONTROLLED PROPERTY OR CASUALTY INSURER HEADING: PL 1991, c. 828, §33 (new)

§6401. SHORT TITLE

This chapter may be known and cited as the "Maine Business Transacted with Broker-Controlled Insurer Act." [1991, c. 828, §33 (NEW).]

SECTION HISTORY

1991, c. 828, §33 (NEW).

§6402. DEFINITIONS

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 828, §33 (NEW).]

1. Accredited state. "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established by the National Association of Insurance Commissioners.

[1991, c. 828, §33 (NEW) .]

2. Broker. "Broker" means any person who is not an agent of the insurer and as an independent contractor solicits, negotiates or procures insurance or annuity contracts or the renewal or continuation of those contracts on behalf of insureds or prospective insureds other than the broker.

[1991, c. 828, §33 (NEW) .]

3. Control or controlled. "Control" or "controlled" has the same meaning as set out in section 222, subsection 2, paragraph B.

[1991, c. 828, §33 (NEW) .]

4. Controlling broker. "Controlling broker" means a broker who directly or indirectly controls an insurer.

[1991, c. 828, §33 (NEW) .]

5. Controlled insurer. "Controlled insurer" means a licensed insurer that is controlled directly or indirectly by a broker.

[1991, c. 828, §33 (NEW) .]

6. Licensed insurer or insurer. "Licensed insurer" or "insurer" means any person licensed to transact a property or casualty insurance business, or both, in this State. The following, inter alia, are not licensed insurers for the purposes of this chapter:

A. All risk retention groups as defined in the federal Superfund Amendments Reauthorization Act of 1986, Public Law No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 United States Code, Section 3901 et seq. and the Maine Liability Risk Retention Act; [1991, c. 828, §33 (NEW).]

B. All residual market pools and joint underwriting authorities or associations; and [1991, c. 828, §33 (NEW).]

C. All captive insurers, which for the purposes of this chapter are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates. [1991, c. 828, §33 (NEW).]

[1991, c. 828, §33 (NEW) .]

7. Producer. "Producer" means an insurance producer licensed pursuant to chapter 16.

[1997, c. 457, §53 (AMD); 1997, c. 457, §55 (AFF) .]

8. Subproducer. "Subproducer" means a producer who, for shared commission or other recompense, places business with a controlled insurer through a controlling broker.

[1991, c. 828, §33 (NEW) .]

SECTION HISTORY

1991, c. 828, §33 (NEW). 1997, c. 457, §53 (AMD). 1997, c. 457, §55 (AFF) .

§6403. APPLICABILITY

This Act applies to licensed insurers as defined in section 6402, either domiciled in this State or domiciled in a state that is not an accredited state with a substantially similar law in effect. Section 222, to the extent not modified by this chapter, continues to apply to all parties within holding company systems subject to this chapter. [1991, c. 828, §33 (NEW).]

SECTION HISTORY

1991, c. 828, §33 (NEW) .

§6404. MINIMUM STANDARDS

1. Applicability. This section applies as follows.

A. This section applies if, in any calendar year, the aggregated amount of gross written premium on business placed with a controlled insurer by a controlling broker is equal to or greater than 5% of the admitted assets of the controlled insurer as of September 30th of the preceding year, as reported in the controlled insurer's quarterly statement. [1991, c. 828, §33 (NEW).]

B. Notwithstanding paragraph A, this section does not apply if:

(1) The controlling broker:

(a) Places insurance only with the controlled insurer, only with the controlled insurer and a member or members of the controlled insurer's holding company system or only with the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(b) Accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

(2) The controlled insurer, except for insurance business written through a residual market facility such as the workers' compensation residual market mechanism or the State's automobile assigned risk plan, accepts insurance business only from a controlling broker, a producer controlled by the controlled insurer or a producer that is a subsidiary of the controlled insurer. [1991, c. 828, §33 (NEW).]

[1991, c. 828, §33 (NEW) .]

2. Required contract provisions. A controlled insurer may not accept business from a controlling broker and a controlling broker may not place business with a controlled insurer unless there is a written contract between the controlling broker and the controlled insurer specifying the responsibilities of each party. The contract must be approved by the board of directors of the insurer and must contain the following minimum provisions.

A. The controlled insurer may terminate the contract for cause upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of any dispute regarding the cause for the termination. [1991, c. 828, §33 (NEW) .]

B. The controlling broker shall render timely accounts to the controlled insurer detailing all material transactions including information necessary to support all commissions, charges and other fees received by or owed to the controlling broker. [1991, c. 828, §33 (NEW) .]

C. The controlling broker shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date must be fixed so that premiums or installments of premiums collected are remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract. [1991, c. 828, §33 (NEW) .]

D. All funds collected for the controlled insurer's account must be held in trust by the controlling broker in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with applicable insurance laws. Funds of a controlling broker not licensed in this State must be maintained in compliance with the requirements of the controlling broker's domiciliary jurisdiction. [1991, c. 828, §33 (NEW) .]

E. The controlling broker shall maintain separately identifiable records of business written for the controlled insurer. The controlled insurer must have access and may copy all accounts and records related to its business in a form usable by the insurer. The records must be retained according to section 3408. [1991, c. 828, §33 (NEW) .]

F. The contract may not be assigned in whole or in part by the controlling broker. [1991, c. 828, §33 (NEW) .]

G. The controlled insurer shall provide the controlling broker with its underwriting standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling broker. [1991, c. 828, §33 (NEW) .]

H. The rates of the controlling broker's commissions, charges and other fees may not be greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling brokers. For purposes of this paragraph and paragraph G, examples of "comparable business" include the same lines of insurance, the same kinds of insurance, the same kinds of risks, similar policy limits and similar quality of business. [1991, c. 828, §33 (NEW) .]

I. If the contract provides that the controlling broker, on insurance business placed with the insurer, must be compensated contingent upon the insurer's profits on that business, then that compensation may not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims are independently verified pursuant to subsection 3. [1991, c. 828, §33 (NEW) .]

J. The controlled insurer shall place a limit on the controlling broker's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling broker when the applicable limit is approached and may not accept business from the controlling broker if the limit is reached. The controlling broker may not place business with the controlled insurer if notified by the controlled insurer that the limit has been reached. [1991, c. 828, §33 (NEW).]

K. The controlling broker may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer, except that the controlling broker may bind facultative reinsurance contracts pursuant to obligatory facultative agreements. All such contracts with the controlled insurer must contain underwriting guidelines including, for reinsurance both assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and schedules of the commissions allowed. [1991, c. 828, §33 (NEW).]

[1991, c. 828, §33 (NEW) .]

3. Audit committee. Every controlled insurer must have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants and an independent casualty actuary acceptable to the superintendent to review the adequacy of the insurer's loss reserves.

[1991, c. 828, §33 (NEW) .]

4. Reporting requirements. A controlled insurer shall make the following reports.

A. In addition to any other required loss reserve certification, by April 1st of each year, the controlled insurer shall file with the superintendent an opinion of an independent casualty actuary acceptable to the superintendent reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding at the preceding year end, including incurred but not reported losses, on business placed by the controlled broker. [1991, c. 828, §33 (NEW).]

B. The controlled insurer shall report annually to the superintendent the amount of commissions paid to the controlling broker, the percentage that amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placement of the same kinds of insurance. [1991, c. 828, §33 (NEW).]

[1991, c. 828, §33 (NEW) .]

SECTION HISTORY

1991, c. 828, §33 (NEW).

§6405. DISCLOSURE

Prior to the effective date of the policy, the controlling insurer shall cause the controlling broker to deliver written notice to the prospective insured disclosing the relationship between the broker and the controlled insurer, except that if the business is placed through a subproducer who is not a controlling broker, the controlling insurer shall cause the controlling broker to retain a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the controlling broker and that the subproducer has notified or will notify the insured. [1991, c. 2, §94 (COR).]

SECTION HISTORY

RR 1991, c. 2, §94 (COR). 1991, c. 828, §33 (NEW).

§6406. PENALTIES

1. Superintendent. The superintendent may take the following actions.

A. If the superintendent finds, after a hearing held in conformity with the Maine Administrative Procedure Act, that the controlling broker or any other person has not complied with this chapter or any rule or order made under this chapter, the superintendent may order the controlling insurer to cease placing business through that controlled broker. [1991, c. 828, §33 (NEW).]

B. If the superintendent further finds that because of that noncompliance the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the superintendent may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages or other appropriate relief for the benefit of the insurer or policyholder. [1991, c. 828, §33 (NEW).]

[1991, c. 828, §33 (NEW) .]

2. Civil action. If an order for liquidation or rehabilitation of the controlled insurer is entered pursuant to chapter 57 and a receiver is appointed, and the superintendent finds pursuant to subsection 1 that the controlling broker or any other person has not complied with this chapter or any rule or order made under this chapter and that the insurer suffered any loss or damage because of that noncompliance, the receiver appointed under that order may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

[1991, c. 828, §33 (NEW) .]

3. Other action. Nothing contained in this section affects the right of the superintendent to impose any other penalties provided for in this Title.

[1991, c. 828, §33 (NEW) .]

4. Other parties. Nothing contained in this section in any manner alters or affects the rights of policyholders, claimants, creditors or other 3rd parties.

[1991, c. 828, §33 (NEW) .]

SECTION HISTORY

1991, c. 828, §33 (NEW).

§6407. EFFECTIVE DATE

This Act takes effect January 1, 1993. Controlled insurers and controlling brokers who are not in compliance with section 6404 on that date have 60 days to come into compliance and shall comply with section 6405 beginning with all policies written or renewed on or after March 1, 1993. [1991, c. 828, §33 (NEW).]

SECTION HISTORY

1991, c. 828, §33 (NEW).

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